

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CINDY LOU HARRIS,

Plaintiff,

v.

DOUBLETREE MANAGEMENT, LLC; aka
DoubleTree by Hilton Hotel San Diego; John
and/or Jane Does 1-10, individuals; Able-
Baker Company 1-10, partnerships; and Black
& White Inc. 1-10, corporations,

Defendants.

3:12-cv-379-RCJ-WGC

ORDER

Currently before the Court is Defendant DoubleTree Management LLC's Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, to Change Venue (#4).

BACKGROUND

Defendant DoubleTree Management LLC filed a petition for removal based on diversity jurisdiction and attached the complaints filed in the Second Judicial District Court in and for Washoe County, Nevada. (Pet. for Removal (#1) at 1-2; Compl. (#1) at 5-10; First Am. Compl. (#1) at 12-17). In the original complaint, Plaintiff Cindy Lou Harris, a resident of Verdi, Nevada, sued Defendants DoubleTree Management LLC and Hilton Worldwide Inc. (Compl. (#1) at 5-6). In the first amended complaint, Plaintiff only sued Defendant Doubletree Management LLC. (First Am. Compl. (#1) at 12).

In the first amended complaint, Plaintiff alleged the following. (*Id.* at 13). DoubleTree Management LLC ("DoubleTree") was a Delaware limited liability company who operated and managed Hilton properties in the State of Nevada. (*Id.*). Hilton and its brands were actively doing business in the State of Nevada as Homewood Suites by Hilton in Reno, Hilton Garden

1 Inn in Reno, and Hamilton Inn & Suites in Carson City. (*Id.*). Hilton's other brands such as
2 Conrad Hotels and Resorts, Hilton Hotels and Resorts, DoubleTree by Hilton, Embassy Suites
3 Hotels, Hilton Garden Inn, Hampton Hotels, Homewood Suites by Hilton, Home2Suites by
4 Hilton, and Hilton Grand Vacations "may be doing business" in Nevada. (*Id.*).

5 Plaintiff alleged the following facts. (*Id.* at 14). On August 11, 2011, Plaintiff and her
6 husband, Randall Harris, traveled to San Diego, California, to attend their daughter's
7 graduation. (*Id.*). They reserved a room at the DoubleTree Hilton Hotel located at 7450
8 Hazard Center Drive, Mission Valley, San Diego, California. (*Id.*). On August 13, 2011,
9 Plaintiff went to take a shower and as "she stepped into the bathtub/shower her foot slipped
10 on the bathtub floor causing her to fall and fracture five of her ribs." (*Id.*). Her ribs were
11 broken and/or severely separated causing substantial pain and bleeding in her right lung. (*Id.*).
12 Prior to August 13th, DoubleTree knew or should have known prior to the incident that the
13 surface of the bathtub/shower was unduly slippery and needed to be repaired and properly
14 maintained to correct its slippery condition. (*Id.*). DoubleTree "failed and neglected to forewarn
15 [Plaintiff] of the bathtub's slippery and dangerous condition before she fell." (*Id.* at 15).
16 DoubleTree failed and neglected to take any precautionary measures to provide for the safety
17 and health of their guests even though it knew of the potential dangerous hazard that existed
18 in the bathroom. (*Id.*). DoubleTree neglected and failed to make rubberized mats readily
19 available and failed to install safety hand grips. (*Id.*). Harris sought in excess of \$26,000 for
20 medical expenses; in excess of \$50,000 for past and future pain, suffering, discomfort, and
21 disfigurement; and in excess of \$5,000 for past and future loss of income. (*Id.* at 16). Harris
22 also sought attorneys' fees and costs. (*Id.*).

23 The pending motion now follows

24 **LEGAL STANDARD**

25 In opposing a defendant's motion to dismiss for lack of personal jurisdiction, the plaintiff
26 bears the burden of establishing that jurisdiction is proper. *CollegeSource, Inc. v.*
27 *AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011). Where a defendant's motion is
28 based on written materials rather than an evidentiary hearing, the plaintiff need only make a

1 prima facie showing of jurisdictional facts to withstand the motion to dismiss. *Id.* However, the
2 plaintiff cannot simply rest on the bare allegations of its complaint. *Id.* A court may not
3 assume the truth of allegations in a pleading which are contradicted by affidavit, but the court
4 will resolve factual disputes in the plaintiff's favor. *Id.*

5 DISCUSSION

6 DoubleTree files a motion to dismiss for lack of personal jurisdiction pursuant to Fed.
7 R. Civ. P. 12(b)(2), or in the alternative, to change venue to the Southern District of California
8 pursuant to 28 U.S.C. § 1404(a). (Mot. to Dismiss (#4) at 1). DoubleTree asserts that it is a
9 Delaware LLC headquartered in McLean, Virginia, and registered with the Nevada Secretary
10 of State as a foreign LLC. (*Id.* at 3). DoubleTree argues that the only contact between Plaintiff
11 and DoubleTree was the accident that occurred in California. (*Id.*). DoubleTree contends that
12 Plaintiff does not allege facts for specific jurisdiction but attempts to establish general
13 jurisdiction by devoting a paragraph to references to entities that are unrelated to DoubleTree's
14 presence in the State. (*Id.*). DoubleTree asserts that it operates one hotel in Nevada which
15 is located in Clark County. (*Id.*). DoubleTree argues that this Court lacks general jurisdiction
16 over it because it does not have substantial or continuous and systematic contacts in Nevada
17 because it is registered as a foreign LLC and not a domestic LLC. (*Id.* at 7). DoubleTree also
18 argues that it is unreasonable for this Court to exercise personal jurisdiction over it under the
19 facts of the case. (*Id.* at 7-13).

20 In response, Plaintiff argues that Hilton Worldwide Inc. has a corporate umbrella of a
21 significant number of Hilton properties doing business in Nevada including DoubleTree by
22 Hilton Hotel Las Vegas Airport, Hilton Garden Inn in Elko, Hilton Garden Inn Las
23 Vegas/Henderson, Hilton Homewood Suites in Reno, Hilton Grand Vacations Club in Las
24 Vegas, Hilton Garden Inn in Las Vegas, Hilton Garden Inn Reno, and Hampton Inn & Suites
25 in Carson City. (Opp'n. to Mot. to Dismiss (#11) at 2). Plaintiff argues that DoubleTree is
26 subject to general jurisdiction in Nevada because it operates and manages the DoubleTree
27 by Hilton Hotel Las Vegas Airport and is registered as a foreign corporation with the Nevada
28 Secretary of State. (*Id.* at 6-7). Plaintiff asserts that due process is satisfied because

1 DoubleTree waived service of the first amended complaint. (*Id.* at 7).

2 In reply, DoubleTree asserts that Hilton Worldwide, Inc. is not a party to this suit and
3 was voluntarily dismissed by Plaintiff in the first amended complaint and, thus, Hilton
4 Worldwide's contacts within Nevada are irrelevant. (Reply to Mot. to Dismiss (#13) at 2).
5 DoubleTree argues that the Federal Rules of Civil Procedure state that acceptance of service
6 does not waive any objection to personal jurisdiction or venue. (*Id.* at 7).

7 "Due process requires 'that in order to subject a defendant to a judgment *in personam*,
8 if he be not present within the territory of the forum, he have certain minimum contacts with
9 it such that the maintenance of the suit does not offend 'traditional notions of fair play and
10 substantial justice.'" *Harris Rutsky & Co. Ins. Serv., Inc. v. Bell & Clements Ltd.*, 328 F.3d
11 1122, 1129 (9th Cir. 2003) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316,
12 66 S.Ct. 154, 90 L.Ed. 95 (1945)). The Court may exercise either general or specific personal
13 jurisdiction.

14 "A court may assert general jurisdiction over foreign (sister-state or foreign-country)
15 corporations to hear any and all claims against them when their affiliations with the State are
16 so 'continuous and systematic' as to render them essentially at home in the forum State."
17 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, __ U.S. __, 131 S.Ct. 2846, 2851, 180
18 L.Ed.2d 796 (2011). General jurisdiction cases are "instances in which the continuous
19 corporate operations within a state [are] so substantial and of such a nature as to justify suit
20 against it on causes of action arising from dealings entirely distinct from those activities." *Id.*
21 at __, 131 S.Ct. at 2853. "For an individual, the paradigm forum for the exercise of general
22 jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which
23 the corporation is fairly regarded as at home." *Id.* at __, 131 S.Ct. at 2853-54. A corporation's
24 continuous activity of some sorts within a state is not enough to support the demand that the
25 corporation be amenable to suits unrelated to that activity. *Id.* at __, 131 S.Ct. at 2856.

26 In *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437, 72 S. Ct. 413, 96 L. Ed. 485
27 (1952), the Supreme Court held that general jurisdiction was permissible. See *Goodyear*
28 *Dunlop*, __ U.S. at __, 131 S.Ct. at 2856. There, the defendant, who was sued in Ohio, was

1 a Philippine mining corporation that had ceased activities in the Philippines during World War
2 II. *Id.* To the extent that the company was doing any business during that time, it was doing
3 so in Ohio. *Id.* The corporation's president had maintained his office in Ohio, kept the
4 company files in that office, and had supervised from the Ohio office "the necessarily limited
5 wartime activities of the company." *Id.* The Supreme Court held that, although the claim-in-
6 suit did not arise in Ohio, it would not violate due process for Ohio to adjudicate the
7 controversy. *Id.*

8 In *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 104 S. Ct. 1868,
9 80 L. Ed. 2d 404 (1984), survivors of United States citizens who died in a helicopter crash in
10 Peru instituted wrongful death actions in a Texas state court against the owner and operator
11 of the helicopter, a Colombian corporation. See *Goodyear Dunlop*, __ U.S. at __, 131 S.Ct.
12 at 2856. The Supreme Court held that the Colombian corporation had no place of business
13 in Texas and was not licensed to do business there. *Id.* The company's contacts in Texas
14 consisted of sending its chief executive officer to Houston for a contract-negotiation session;
15 accepting into its New York bank account checks drawn on a Houston bank; purchasing
16 helicopters, equipment, and training services from a Texas enterprise for substantial sums;
17 and sending personnel to Texas for training. *Id.* The Supreme Court held that those links to
18 Texas did not constitute the kind of continuous and systematic general business contacts
19 found to exist in *Perkins* and were insufficient to support the exercise of general jurisdiction
20 over a claim that neither arose out of nor was related to defendant's activities in Texas. *Id.*

21 As an initial matter, Plaintiff's argument that DoubleTree is subject to personal
22 jurisdiction in Nevada because it waived service of process is unavailing. Federal Rule of Civil
23 Procedure 4(d)(5) explicitly states that "[w]aiving service of a summons does not waive any
24 objection to personal jurisdiction or to venue." Fed. R. Civ. P. 4(d)(5).

25 The Court finds that it lacks general personal jurisdiction over DoubleTree. The Court
26 notes that DoubleTree Management LLC and Hilton Worldwide, Inc. are two separate
27 corporations and, thus, Plaintiff must establish facts to exert general jurisdiction over the
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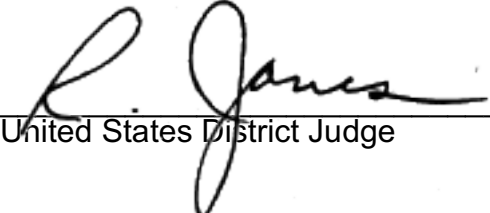
1 corporation it is suing.¹ Based on the pleadings before the Court, DoubleTree is a Delaware
2 LLC that is headquartered in McLean, Virginia. DoubleTree operates only one hotel in
3 Nevada—DoubleTree by Hilton Hotel Las Vegas Airport. Hilton Worldwide, Inc. operates a
4 handful of hotels throughout the state. DoubleTree is registered as a foreign corporation with
5 the Nevada Secretary of State's Office and has a commercial registered agent in Las Vegas.
6 Nevertheless, there are no allegations that DoubleTree conducts any national corporate
7 business from its one Las Vegas hotel. As such, this Court does not find that Nevada is where
8 the DoubleTree corporation is fairly regarded as home. Additionally, DoubleTree's contacts
9 in the state do not support the demand that it be amenable to suits in Nevada for a claim that
10 arose solely out of actions that occurred in its San Diego, California hotel. Accordingly, the
11 Court finds that it lacks personal jurisdiction over Defendant DoubleTree and grants
12 DoubleTree's Motion to Dismiss for Lack of Personal Jurisdiction (#4).

13 CONCLUSION

14 For the foregoing reasons, IT IS ORDERED that Defendant DoubleTree Management
15 LLC's Motion to Dismiss for Lack of Personal Jurisdiction, or in the Alternative, to Change
16 Venue (#4) is GRANTED. The Court dismisses this case for lack of personal jurisdiction over
17 Defendant.

18 The Clerk of the Court shall enter judgment accordingly.

19
20 DATED: This 27th day of February, 2013.

21
22 
23 United States District Judge
24

25 ¹ Under the alter ego test, a court "may find the necessary contacts to support the
26 exercise of personal jurisdiction over a foreign parent company by virtue of its relationship to
27 a subsidiary that has continual operations in the forum." *Bauman v. DaimlerChrysler Corp.*,
28 644 F.3d 909, 920 (9th Cir. 2011). This test is "predicated upon a showing of parental control
over the subsidiary." *Id.* In this case, Plaintiff has not established that Hilton Worldwide, Inc.
controls DoubleTree such that there is a unity of interest and ownership that the separate
personalities of the two entities no longer exist and that the failure to disregard their separate
identities would result in fraud or injustice. See *id.*